

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JULIE A. SU, Acting Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

CLAUDE DUBOIS EXCAVATING INC.,

Defendant.

Civil Action No.

COMPLAINT

Julie A. Su, Acting Secretary of Labor, United States Department of Labor (the “Secretary”), hereby alleges:

1. This action arises under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.*, and is brought to redress violations and to obtain other appropriate relief necessary to enforce the provisions of Title I of ERISA pursuant to ERISA Sections 502(a)(2) and (5), 29 U.S.C. §§ 1132(a)(2) and (5).

2. The Court has jurisdiction over this action pursuant to ERISA Section 502(e)(1), 29 U.S.C. § 1132(e)(1).

3. Venue of this action lies in the District of Maine pursuant to ERISA Section 502(e)(2), 29 U.S.C. § 1132(e)(2).

4. Defendant Claude Dubois Excavating Inc. established the Claude Dubois Excavating, Inc. 401(k) Plan (the “Plan”), an employee pension benefit plan within the meaning of ERISA Section 3(2)(A), 29 U.S.C. § 1002(2)(A), which is covered under ERISA pursuant to Section 4(a), 29 U.S.C. § 1003(a).

5. During the pertinent period of this complaint, which includes Plan years 1991 until the present (the “pertinent period”), Defendant Claude Dubois Excavating Inc. was the Plan Sponsor, as defined by ERISA Section 3(16)(B)(i), 29 U.S.C. §1002(16)(B)(i), and the Plan Administrator of the Plan and, as such, was a fiduciary with respect to the Plan within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A).

6. During the pertinent period, Defendant Claude Dubois Excavating Inc. had been the employer within the meaning of ERISA Section 3(5), 29 U.S.C. §1002(5), and had been a corporation having an office and place of business at RR4, Box 145C, Alfred Road, Biddeford, Maine, 04005, within the jurisdiction of this Court. Claude Dubois Excavating Inc. ceased operations in or around 1991.

7. The purpose of the Plan was to provide retirement benefits for the exclusive benefit of its participants, employees of Claude Dubois Excavating Inc., and their beneficiaries.

8. During the pertinent period, Defendant Claude Dubois Excavating Inc. was responsible for ensuring the continued prudent administration of the Plan, including its proper termination, and also for managing and controlling its assets.

9. During the pertinent period, Claude Dubois was President and a Director of Claude Dubois Excavating Inc. In addition, Claude Dubois was a Plan Trustee who exercised discretionary authority or control respecting management of the Plan and exercised authority or control respecting management or disposition of assets of the Plan. As such, Claude Dubois was a fiduciary with respect to the Plan within the meaning of ERISA Section 3(21)(A), 29 U.S.C. §1002(21)(A).

10. During the pertinent period, Claude Dubois was an authorized signatory of the Plan.

11. On January 18, 2015, Claude Dubois passed away.

12. Prior to ceasing operations in or around 1991, Defendant Claude Dubois Excavating Inc. failed to take steps to ensure the continuing prudent administration of the Plan. Defendant Claude Dubois Excavating Inc. failed to take fiduciary responsibility for the operation and administration of the Plan and failed to take proper control of its assets, including taking appropriate measures to effectuate the distribution of Plan assets to the participants and beneficiaries, and terminating the Plan.

13. No individual or entity has taken fiduciary responsibility for the operation and administration of the Plan and management of its assets.

14. As of March 7, 2023, the Plan had four (4) participants and approximately \$25,587.55 in assets.

15. American Funds Service Company (“American Funds”) is in possession of the assets of the Plan.

16. American Funds will not release the assets of the Plan to the participants or beneficiaries without receiving authorization from a fiduciary to the Plan.

17. The Plan has been abandoned and has not been formally terminated.

18. As a result of the acts or omissions set forth at paragraphs 12-17, Defendant Claude Dubois Excavating Inc. failed to discharge its fiduciary duties for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA Section 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

19. As a result of the acts or omissions set forth in paragraphs 12-17, Defendant Claude Dubois Excavating Inc. failed to discharge its fiduciary duties with care, skill, prudence, and diligence, in violation of ERISA Section 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

20. As a result of the conduct set forth at paragraphs 8-17, the Plan presently does not have a fiduciary with authority and discretion to manage and control its assets, operations, and administration as required by ERISA Section 402(a), 29 U.S.C. § 1102(a), and ERISA Section 403(a), 29 U.S.C. § 1103(a), and there is no one other than this Court with the authority to appoint a new fiduciary with such necessary authority.

21. As a result of the acts or omissions set forth at paragraphs 8-17, participants will be unable to obtain their appropriate Plan distributions pursuant to the terms of the Plan unless and until this Court appoints a fiduciary for the Plan.

22. As a result of the acts or omissions set forth at paragraphs 8-17, the Plan's termination cannot be achieved unless, and until, this Court appoints a fiduciary for the Plan.

WHEREFORE, the Secretary prays that this Court enter an Order:

1. Appointing an independent fiduciary to administer the Plan, effectuate the proper distribution of Plan assets to the participants and beneficiaries, and terminate the Plan.
2. Providing such other relief as is equitable and just.

Respectfully submitted,

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Solicitor of Labor

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Regional Solicitor

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